

SYNOPSIS

PERSONAL INCOME TAX – TAX NOT PAID – CHECKS PAYABLE TO INTERNAL REVENUE SERVICE – Taxpayers are not entitled to a credit against their personal income tax owed to the State of West Virginia for the amount of estimated payments made by checks mailed to the State Tax Commissioner, but made payable to the Internal Revenue Service, which checks were forwarded by the State Tax Commissioner to the Internal Revenue Service and cashed by the Internal Revenue Service.

PERSONAL INCOME TAX – ADDITIONS TO TAX – The taxpayers' failure to fully pay the amount of tax shown due on their personal income tax return resulted from their reasonable belief that they had actually made estimated payments sufficient to satisfy their entire tax liability, which is a good faith error of fact on their part justifying waiver of additions to tax imposed under both W. Va. Code § 11-10-18 and W. Va. Code § 11-10-18a.

PERSONAL INCOME TAX – STATUTORY INTEREST – Interest is imposed by statute and, there being no statutory provision for the waiver of interest, it may not be waived.

FINAL DECISION

On January 15, 2005, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2003, for tax, interest through October 28, 2004, and additions to tax, and for a total assessed tax liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked January 15, 2005, received in the offices of the West Virginia Office of Tax Appeals on January 21, 2005, the Petitioner timely filed with this tribunal a petition for reassessment.

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

FINDINGS OF FACT

1. The Petitioners are individuals who reside in Beckley, West Virginia.
2. For the year 2003, the Petitioners made estimated tax payments to the State of West Virginia and to the Internal Revenue Service.
3. The Petitioners erroneously sent to the State Tax Commissioner three checks that were made payable to "Internal Revenue Service. *See* Petitioners' Exhibit No. 2.
4. These checks were intended to be estimated tax payments to the State of West Virginia for the Petitioners' personal income tax liability for the year 2003.
5. The State Tax Commissioner sometimes receives checks that are made payable to the Internal Revenue Service, but which are erroneously sent to the State Tax Commissioner.
6. The Accounts Monitoring Unit Supervisor testified that when the State Tax Commissioner erroneously receives checks made payable to the Internal Revenue Service, it is the Commissioner's standard practice to forward said checks to the Internal Revenue Service.
7. The Accounts Monitoring Unit Supervisor further testified that the Internal Revenue Service sometimes receives checks made payable to the State Tax Department, which are erroneously sent to the Internal Revenue Service.
8. The Accounts Monitoring Unit Supervisor testified that when the Internal Revenue Service erroneously receives checks made payable to the State Tax Commissioner, it is the standard practice of the Internal Revenue Service to forward such checks to the State Tax Commissioner.

9. The Accounts Monitoring Unit Supervisor testified that when the State Tax Commissioner received the checks, most likely they were forwarded to the Internal Revenue Service, the named payee thereon, in accordance with the Commissioner's standard practice.

10. The reverse side of the checks made payable to the "Internal Revenue Service" give every indication that they were cashed by the Internal Revenue Service and, it appears, were credited to the federal income tax account of the Petitioners.

11. When the Petitioners filed their West Virginia joint personal income tax return for 2003, they claimed the total amount of the three checks as a credit against their 2003 West Virginia personal income tax liability.

12. The State Tax Commissioner did not give the Petitioners any credit for the amounts that were forwarded to him by checks made payable to the Internal Revenue Service.

DISCUSSION

The first issue is whether the Petitioners are entitled to credit for the amounts they remitted to the State Tax Commissioner by three separate checks, but which were erroneously made payable to the Internal Revenue Service. The checks were forwarded to the Internal Revenue Service by the State Tax Commissioner. From all appearances, the Internal Revenue Service cashed the checks and credited the Petitioners with the total of the checks against their federal income tax liability.

The Petitioners contend that because they mailed the checks to the State Tax Commissioner, they should receive credit for the total amount of the checks. Stated differently, the Petitioners contend that the State Tax Commissioner should not have forwarded the checks to the Internal Revenue Service but, instead, should have cashed the checks and given the Petitioners credit for the total thereof, in spite of the fact that they were not made payable to the

State Tax Commissioner. Therefore, the Petitioners conclude, they should receive credit which would abate the assessment of tax against them.

This position is without merit. The payments which were intended as estimated tax payments were erroneously made payable to the Internal Revenue Service, not to the State Tax Commissioner. This was the Petitioners' error, not the Tax Commissioner's. The State Tax Commissioner is under no duty to divine the intention of the taxpayer, especially when that intention is contrary to the taxpayers' apparent intention as expressed by the taxpayers' actions. Instead, he forwarded the checks to the Internal Revenue Service in accordance with his standard practice, a practice that can only be described as reasonable. Consequently, the Tax Commissioner did not keep any of the amount for which the Petitioner's claim a credit. The Petitioners may not properly claim a credit against their 2003 tax liability for an amount that was not actually received and kept by the State Tax Commissioner.

This amount for which the Petitioners claim a credit was received by the Internal Revenue Service. One of four scenarios likely resulted: 1) The Internal Revenue Service credited the Petitioners with that amount against their tax liability and refunded them the amount paid in excess of their actual tax liability; 2) The Internal Revenue Service credited the Petitioners with that amount against their tax liability and notified them that they had a deficiency; 3) The Internal Revenue Service is still in possession of the Petitioner's funds over and above the amount of their actual tax liability; or 4) The Internal Revenue Service used the amount over and above the Petitioner's tax liability to offset some other debt owed by them, as permitted by federal law. Regardless of which of these scenarios transpired, to determine the status and disposition of the amount in question, it appears that the Petitioners should contact the Internal Revenue Service and, if applicable, seek a refund from it.

The Petitioners also contend that they are entitled to waiver of additions to tax and the estimated tax penalty, and to an abatement of the statutory interest. The Petitioners make two arguments in this respect. First, they contend that the State Tax Commissioner should have cashed the checks made payable to the Internal Revenue Service, rather than forwarding them to the Internal Revenue Service. This argument presumes that it is the fault of the Tax Commissioner that he did not cash the Petitioners' checks. As discussed above, this contention is without merit.

Second, the taxpayers maintain that they acted in good faith in making their estimated tax payments, but that they simply erred in making the checks payable to the Internal Revenue Service. This is borne out by the evidence. They attempted to make their estimated payments and, in fact, thought they had done so. This Office concludes that this constitutes reasonable cause for waiver of additions to tax.

With respect to the waiver of the estimated tax penalty,^{*} W. Va. Code § 11-10-18a(e)(3) provides:

(3) *Waiver in certain cases.* – No addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment if and to the extent the tax commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

The evidence in this matter shows that the Petitioners recognized their duty to make estimated tax payments, that they attempted to make such payments, that they were not dilatory in making such payments, that they are not repeat offenders and that the only reason the payments were not made was an honest mistake on their part. This Office is of the opinion that, under the

^{*} What is described in the assessment as “estimated tax penalty” is, in fact, an addition to tax assessed pursuant to the provisions of W. Va. Code § 11-10-18a.

circumstances, the imposition of the addition to tax would be against equity and good conscience. Consequently, the estimated tax penalty is waived.

With respect to the Petitioners' request respecting the waiver of interest, there is no statutory provision respecting waiver of interest. This Office has no authority to waive interest.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioners to show that the assessment issued against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002].

2 The Petitioners' failure to make estimated tax payments in the full amount claimed by them resulted from their own mistake, specifically, their failure to name the proper payee on the some of their checks by which they made estimated tax payments.

3. The Petitioners in this matter have failed to carry their burden of showing that the assessment issued against them is erroneous, unlawful, void or otherwise invalid.

4. The error made by the Petitioners in naming the wrong payee on their checks making estimated tax payments was a good faith mistake, which constitutes good cause for waiver of additions to tax assessed pursuant to W. Va. Code § 11-10-18, and the estimated tax penalty assessed pursuant to W. Va. Code § 11-10-18a.

5. Interest is imposed by statute and there is no statutory authority for the waiver of interest.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the tax assessment issued against the Petitioner for the year 2003 should be and is hereby **AFFIRMED** as to the tax and interest for a total liability of \$. However the regular additions to tax and the estimated tax “penalty: are **VACATED** in full.

Interest continues to accrue on the affirmed tax liability until the tax and accrued interest is fully paid.